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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/693,617	10/24/2003	Mark F. Bares	M297.12-0283	6470

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EXAMINER

UNDERWOOD, DONALD W

ART UNIT PAPER NUMBER

3652

DATE MAILED: 01/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/693,617

Applicant(s)

BARES ET AL.

Examiner

Donald Underwood

Art Unit

3652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10/19/05.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10, 12, 16, 18 and 19 is/are allowed.
- 6) ☒ Claim(s) 1-9, 11, 13-15, 17 and 20-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The drawing replacement sheets filed 10/19/05 have been approved. However, 58X in line 6 on page 10 and 76B in line 11 on page 13 in the specification must appear in the drawing or be canceled. Also 170 in figure 21 must be given a lead line.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3, 4, 8, 13, 15, 17 and 20-27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 3, this claim contradicts claim 1. In claim 3, line 3, "container" should be --attachment support--. See line 6 in claim 1.

Regarding claim 4, "the container" lacks a clear antecedent basis rendering the claim indefinite.

Regarding claim 8, a phrase similar to --and the support is mounted-- should be inserted after "support" in line 4; otherwise, the claim is inaccurate.

Regarding claim 13, this claim depends from claim 11 which is directed to the species in figure 10 while the instant claim is directed to the species in figure 1 rendering the instant claim indefinite.

Regarding claim 15, this claim sets forth a desired result but is void of structure to provide the result and is thus incomplete.

Regarding claim 17, "the pivoting plate" in line 3 lacks a clear antecedent basis rendering the claim indefinite.

Regarding claim 20, "a loader arm" in lines 4, 7 and 10 should be --the loader arm--. See "a loader arm" in line 2.

Regarding claim 21, this claim is indefinite since parent claim 20 is directed to a mounting for a work attachment and the instant claim sets forth the attachment. This claim should be rewritten as an independent claim with the preamble directed towards an attachment and a mounting.

Regarding claim 22, "a" in the last line should be --the--.

Regarding claim 23, this claim contradicts claim 20. Claim 20 sets forth that the second end of the link is mounted to the loader frame and the instant claim sets forth it is mounted to the attachment plate. The instant claim attempts to clarify this situation by stating that the plate is part of the frame; however, this is contrary to the norm. The loader frame and the attachment plate are separate in the art and can not be claimed as being the same, i. e., the claim must clearly distinguish between the loader frame and attachment plate. Also "forward ends" in line 2 of the instant claim should be --forward end-- since only one arm is claimed.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by
Rohrbaugh.

Note figure 11 in Rohrbaugh where the bottom of 36 is the attachment support, 66 is the arm, and the tab between 36 and 37 is synonymous with the link.

Claims 9, 11 and 14 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by British reference 757,638.

Note arm 11 in the reference.

Regarding claim 14, note the tab on the bucket for pivot 16 comprises an integral support.

Claims 20, 21, 22 and 25 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by British reference 757,638.

Note arm 11 and link 18.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 2, 3 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rohrbaugh in view of the following comments.

It would have been obvious to provide walls around 36 if desiring to move loose material, i. e., dirt or gravel, in view of the conventional use of dump trucks.

Claims 6, 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rohrbaugh in view of John.

It would have been obvious to provide a mixer on Rohrbaugh's attachment in view of the teaching in John

Regarding claim 7, whether one used a mixer as taught by John or some other conventional mixer would have been an obvious matter of design.

Claims 10, 12, 16, 18 and 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicants' remarks regarding claim 1 have been carefully considered but are not deemed persuasive. First the lift arms are not positively claimed and second the cylinder in Rohrbaugh is synonymous with lift arms.

Applicants' remarks regarding claim 9 have been considered but are not deemed persuasive. Note point 16 in the British reference.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald Underwood whose telephone number is 571-272-6933. The examiner can normally be reached on Mon-Thursday 7:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen D. Lillis can be reached on 571-272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Donald Underwood 01/14/06
Donald Underwood
Primary Examiner
Art Unit 3652